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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

DR. SHAUN L. W. SAMUELS,

 Plaintiff,

 vs.

 TRIVASCULAR, INC., ET AL.

 Defendants.

CASE NO. 3:13-CV-02261-EMC

**STIPULATION AND
 [PROPOSED] ORDER AND
 FINAL JUDGMENT OF NON-
 INFRINGEMENT OF THE ‘575
 PATENT**

Judge: Hon. Edward M. Chen

TRIVASCULAR, INC.,

 Counter-Claimant,

 vs.

 DR. SHAUN L. W. SAMUELS,

 Counter-Defendant.

WHEREAS, Plaintiff Dr. Shaun L.W. Samuels (“Samuels”) and Defendant TriVascular, Inc. (“TriVascular”), and individual Defendants Michael A. Chobotov, Robert G. Whirley, and Joseph W. Humphrey (“Individual Defendants”) (“the Parties”) stipulate and move for entry of judgment of non-infringement under all claims of U.S. Patent No. 6,007,575 (“the ‘575 patent”) as to the Defendants based on the Court’s Claim Construction Order (Dkt. No. 92);

1 WHEREAS, entering judgment of non-infringement now will allow the parties to forego
2 further litigation in this Court of the '575 patent, while preserving Samuels's right to appeal the
3 Court's Claim Construction Order (Dkt. No. 92);

4 WHEREAS, Civil L.R. 54-1(a) requires that Bill of Costs be served and filed no later than 14
5 days after entry of judgment;

6 WHEREAS, Civil L.R. 54-5 requires that a Motion for Fees be served and filed no later than
7 14 days after entry of judgment; and

8 WHEREAS, Samuels intends to appeal the Court's forthcoming entry of a judgment of non-
9 infringement based on this stipulation.

10 IT IS HEREBY STIPULATED AND AGREED by the Parties, subject to the approval of the
11 Court, as follows:
12

13 1. This is a patent infringement action brought by Samuels against TriVascular, Michael
14 A. Chobotov, Robert G. Whirley, and Joseph W. Humphrey. Samuels filed this patent litigation
15 action against TriVascular on May 17, 2013. *See* Dkt. No. 1. Samuels filed a Second Amended
16 Complaint on August 13, 2015 adding the Individual Defendants. *See* Dkt. No. 77. The Defendant
17 TriVascular filed an Answer, Affirmative Defenses and Counterclaims to Plaintiff's Second
18 Amended Complaint on August 27, 2015 (Dkt. No. 78), and the Individual Defendants filed their
19 Answer and Affirmative Defenses on August 27, 2015 (Dkt. No. 79). TriVascular's pending
20 counterclaims are patent counterclaims of non-infringement (First Counterclaim) and invalidity
21 (Second Counterclaim), as well as counterclaims for breach of contract and promissory estoppel
22 (Third, Fourth and Fifth Counterclaims). Plaintiff has asserted infringement of claims 1-7, 9-11, 13-
23 17, 19-21, and 23-24 of the '575.

24 2. On November 12, 2015, this Court construed certain claim terms found in the '575
25 patent. (Claim Construction Order, Dkt. No. 92).
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3. The Parties disputed the construction of the term “means for injecting an inflation material into said cuff to inflate it “ and “means for inflating the cuff with inflation material” of claims 1, 14 and 23 of the ’575 patent as follows:

Claim Term	Samuels	Defendants
means for injecting an inflation material into said cuff to inflate it [claim1]	<p>This is a means-plus-function element governed by 35 U.S.C. §112, ¶ 6.</p> <p>Function: The function is injecting an inflation material into said cuff to inflate it.</p> <p>Structure: The corresponding structure is an inflation device, such as the kind of syringe shown in Figs. 1 and 9a-9c (71, 117) and inflation tubing (61, 115).</p>	<p>This is a means-plus-function limitation governed by 35 U.S.C. §112, ¶ 6.</p> <p>Function: The function is injecting an inflation material into said cuff to inflate it.</p> <p>Structure: The corresponding structure is an inflation syringe of the kind shown in Figs. 1 and 9a-9c (71, 117) containing an inflation material; inflation tubing (61, 115) with a mating end (63) that opens a valve by separating opposing leaflets (51, 53) that are in an inflation port (39, 123) to inflate the cuff.</p>

Claim Term	Samuels	Defendants
means for inflating the cuff with inflation material [claim 14]	<p>This is a means-plus-function element governed by 35 U.S.C. §112, ¶ 6.</p> <p>Function: The function is inflating the cuff/plurality of cuffs with inflation material.</p> <p>Structure: The corresponding structure is an inflation device, such as the kind of syringe shown in Figs. 1 and 9a-9c (71, 117) and inflation tubing</p>	<p>This is a means-plus-function limitation governed by 35 U.S.C. §112, ¶ 6.</p> <p>Function: The function is inflating the cuff/plurality of cuffs with inflation material.</p> <p>Structure: The corresponding structure is an inflation syringe of the kind shown in Figs. 1 and 9a-9c (71, 117) containing</p>
means for inflating the plurality of cuffs with inflation material [claim 23]		

	(61, 115)	an inflation material; inflation tubing (61, 115) with a mating end (63) that opens a valve by separating opposing leaflets (51, 53) that are in an inflation port (39, 123) to inflate the cuff with the inflation material.
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4. The Parties also disputed the construction of the term “valve” of claims 1, 14 and 23 of the ’575 patent as follows:

Claim Term	Samuels	Defendants
a valve integral [with the inflatable cuff, cl. 1] [with said inflation port, cl. 14] [with one of the plurality of cuffs, cl. 23] for permitting entry of the inflation material . . . and thereafter sealing said cuff to prevent deflation	Any structure that affects fluid flow, formed or combined as a unit with the cuff, and is capable of not stopping inflation material from entering the cuff from the means for injecting and capable of stopping inflation material from leaving the cuff after the injection material has entered the cuff to prevent deflation.	a device built-in to the [cuff] [inflation port] [one of the cuffs] that has a movable part (such as leaflets) that opens to permit entry of the inflation material and thereafter closes to seal the cuff to prevent deflation. This construction does not cover inflation tubing inserted into an inflation port with an interference fit.
Claim Term	Samuels	Defendants
a valve	Any structure that affects fluid flow	See above
Claim Term	Samuels	Defendants
“for permitting entry of the inflation material from the means for injecting and thereafter sealing said cuff to prevent deflation”	Capable of not stopping inflation material from entering the cuff from the means for injecting and capable of stopping inflation material from leaving the cuff after the injection material has entered to cuff to prevent deflation.	See above

5. The Parties also disputed the construction of the term “inflatable and deflatable cuff,” “a cuff,” and “a plurality of cuffs” of claims 1, 14 and 23 of the ’575 patent as follows:

Claim Term	Samuels	Defendants
inflatable and deflatable cuff of generally hollow cylindrical continuation (sic. configuration)	Cuff of generally hollow cylindrical configuration (per Claim Construction Order)	a band-like structure that has an inner surface and outer surface creating an inflatable chamber that may be inflated by filling the chamber with fluid or deflated by allowing the fluid to leave in ordinary use

6. The Parties now stipulate that, given the Court’s construction of the term “means for injecting an inflation material into said cuff to inflate it” as set forth in the Court’s Claim Construction Order (Dkt. No. 92) as well as the statement at page 7 of the cuff 17 having to be “inflated and deflated by means of a valve, indicated generally at 37 in FIGS 4a and 4b, which is integral with inflation port 39 of cuff 17” in the ’575 Patent, Samuels cannot prove infringement of claims 1-7, 9-11, and 13 of the ’575 patent by the Defendants.

7. The Parties now stipulate that, given the Court’s construction of the term “means for inflating the cuff with inflation material” as set forth in the Court’s Claim Construction Order (Dkt. No. 92) as well as the statement at page 7 of the cuff 17 having to be “inflated and deflated by means of a valve, indicated generally at 37 in FIGS 4a and 4b, which is integral with inflation port 39 of cuff 17” in the ’575 Patent Samuels cannot prove infringement of claims 14-17, 19-21, and 23-24 of the ’575 patent by the Defendants.

8. The Parties further stipulate that, given the Court’s construction of the term “a valve integral with the inflatable cuff for permitting entry of the inflation material from the means for injecting and thereafter sealing said cuff to prevent deflation” as set forth in the Court’s Claim Construction Order (Dkt. No. 92), Samuels cannot prove infringement of claims 1-7, 9-11 and 13 of

1 the '575 patent by the Defendants.

2 9. The Parties further stipulate that, given the Court's construction of the term "a valve
3 integral with the inflatable cuff for permitting entry of the inflation material from the means for
4 inflating and thereafter sealing said cuff to prevent deflation" as set forth in the Court's Claim
5 Construction Order (Dkt. No. 92), Samuels cannot prove infringement of claims 14-17, 19-21, and
6 23-24 of the '575 patent by the Defendants.
7

8 10 The Parties further stipulate that, given the Court's construction of the term "a valve"
9 as set forth in the Court's Claim Construction Order (Dkt. No. 92), Samuels cannot prove
10 infringement of claims 1-7, 9-11, 13-17, 19-21, and 23-24 of the '575 patent by the Defendants.
11

12 11. The Parties further stipulate that, given the Court's construction of the term "for
13 permitting entry of the inflation material from the means for injecting and thereafter sealing said cuff
14 to prevent deflation" as set forth in the Court's Claim Construction Order (Dkt. No. 92), Samuels
15 cannot prove infringement of claims 1-7, 9-11 and 13 of the '575 patent by the Defendants.

16 12. The Parties further stipulate that, given the Court's construction of the term "for
17 permitting entry of the inflation material from the means for inflating and thereafter sealing said cuff
18 to prevent deflation" as set forth in the Court's Claim Construction Order (Dkt. No. 92), Samuels
19 cannot prove infringement of claims 14-17, 19-21, and 23-24 of the '575 patent by the Defendants.
20

21 13. The Parties further stipulate that, given the Court's construction of the term
22 "inflatable and deflatable cuff of generally hollow cylindrical continuation [sic configuration]" as set
23 forth in the Court's Claim Construction Order (Dkt. No. 92), including that "an 'inflatable cuff' must
24 mean that the entire structure is inflated" as set forth in footnote 9 of Dkt. No. 92, Samuels cannot
25 prove infringement of claims 1-7, 9-11, and 13 of the '575 patent by the Defendants.

26 14. The Parties further stipulate that the Court enter judgment of non-infringement as to
27 the '575 patent to conserve judicial resources and to avoid the time and expense of further discovery
28

1 and motion practice related to the '575 patent. Plaintiff is not asserting any other claims of the '575
2 patent other than claims 1-7, 9-11, 13-17, 19-21, and 23-24. Upon entry of such judgment, Samuels
3 intends to appeal the Court's forthcoming entry of judgment of non-infringement based on this
4 stipulation.

5
6 15. The Parties further stipulate that Rule 54(b) authorizes a district court to "direct entry
7 of a final judgment as to one or more, but fewer than all, claims ... if the court expressly determines
8 that there is no just reason for delay." Fed. R. Civ. P. 54(b). In view of the Court's claim
9 construction, as described above, and because the non-infringement issue is separable from the
10 remaining counterclaims, in the interest of sound judicial administration, there is no just reason for
11 delaying the entry of final judgment of non-infringement as to the '575 patent, and final judgment of
12 non-infringement, subject to the Court's approval, is hereby entered pursuant to Fed. R. Civ. P.
13 54(b).
14

15 16. As to TriVascular's Second through Fifth Counterclaims, the Parties further stipulate
16 that the counterclaims, subject to the Court's approval, are hereby stayed pending Samuels's appeal
17 of the judgment of non-infringement as to the '575 patent. Defendants are preserving their rights
18 and by entering into this stipulation Defendants do not waive the right to assert non-infringement
19 under any claim limitations or claim constructions if the case is remanded. The stay shall be lifted
20 after the appellate court's issuance of the mandate regarding Samuels's appeal of the Court's
21 judgment, or if Samuels later chooses to abandon an appeal, the stay shall be lifted after Samuels
22 provides notice that he is abandoning the appeal.
23

24 17. The Parties further stipulate that in order to promote judicial efficiency and to
25 conserve litigation costs, the deadlines for the Bill of Costs and Motion for Fees (including Motion
26 for Fees pursuant to 35 U.S.C. § 285) concerning the non-infringement judgment that is the subject
27 of this Stipulation be delayed until 21 days after the appellate court's issuance of the mandate
28

1 regarding Samuels's appeal of the Court's judgment, or if Samuels later chooses to abandon an
 2 appeal, the deadlines be delayed until 21 days after Samuels provides notice that he is abandoning
 3 the appeal.

4 **IT IS SO AGREED AND STIPULATED:**

5
 6 DATED: December 15, 2015

7 Respectfully submitted,

8 /s/ Marc H. Cohen

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Respectfully submitted,

9 /s/ James D. Petruzzi

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19 **ATTESTATION OF CONCURRENCE IN FILING**

20 I, James D. Petruzzi, am the ECF User whose identification and password are being used to
 21 file this Joint Stipulation. In compliance with Local Rule 5-1(i)(3), I hereby attest that Marc H.
 22 Cohen of Kirkland & Ellis, LLP has concurred in this filing.
 23

25 /s/ James D. Petruzzi

26 James D. Petruzzi (SBN 115175)
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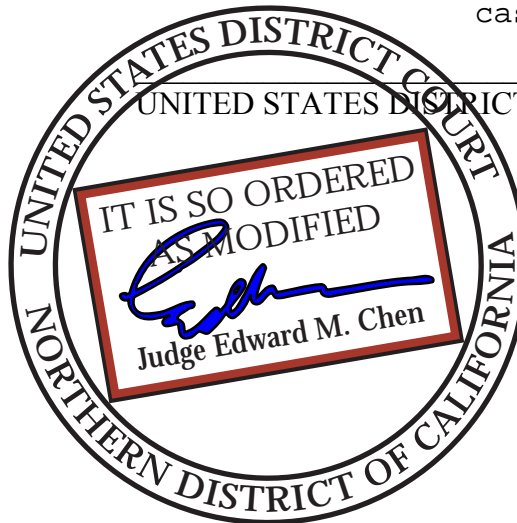
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PURSUANT TO STIPULATION, IT IS SO ORDERED. The Clerk of the Court
is directed to close this
case.

DATED: 12/17/15

UNITED STATES DISTRICT COURT JUDGE



CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2015 that a copy of the foregoing document is being electronically filed with the Clerk of the United States District Court for the Northern District of California by using the CM/ECF system, which will send notice of such filing to all counsel of record.

Dated: December 15, 2015

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